

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

GERARDO AMEZCUA
CHRB License #300390
Respondent

CHRB Case #15LA0282
15LA0290

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order for payment of the five thousand dollar (\$5,000.00) fine and setting the one hundred-twenty (120) days of suspension.

IT IS SO ORDERED ON April 25, 2016.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

Date: February 19, 2016

In the Matter of the Complaint Against:

Name

Respondent: Gerardo Amezcua

Case# 15LA0282

15LA 0290

INTRODUCTION

This matter was heard on February 19, 2016 before the Board of Stewards, Tom Ward, Randy Winick, and James Dreyer, in the Los Alamitos Stewards' Office.

Present at the hearing was the Respondent, Gerardo Amezcua, telephonically, the Board of Stewards, Supervising Investigator Tom Blake, Senior Investigator Kevin Kitashima who presented the case, and Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Gerardo Amezcua was the trainer of record for the horse "Truly Censored," who started in the fourth race at Los Alamitos Race Course on November 15, 2015. On December 3, 2015, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Truly Censored" (Urine Sample #LA32623) tested positive for the class III prohibited drug Clenbuterol after finishing second in the fourth race on November 15, 2015. Trainer Amezcua was notified of the positive on December 3, 2015, and a barn inspection found no further violations. Owner Sepulveda completed the forms for the split sample testing. Industrial Laboratory was selected as the lab to conduct the testing of the split sample. On December 31, 2015, investigators received a Final Report from Industrial Laboratories confirming that split sample #LA32623 contained the presence of Clenbuterol (103+/-15 pg/ml).

Trainer Gerardo Amezcua was the trainer of record for the horse "Balboa Dasher," who started in the fifth race at Los Alamitos Race Course on November 29, 2015. On December 10, 2015, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Balboa Dasher" (Urine Sample #LA32719) tested positive for the class III prohibited drug Clenbuterol after finishing second in the fifth race on November 29, 2015. Trainer Amezcua was notified of the positive on December 10, 2015, and a barn inspection found no further violations. On December 13, 2015 Trainer Amezcua completed the forms for the split sample testing. Industrial Laboratory was selected as the lab to conduct the testing of the split sample. On January 15, 2016, investigators received a Final Report from Industrial Laboratories confirming that split sample #LA32719 contained the presence of Clenbuterol (179+/-15 pg/ml).

FINDINGS OF FACT

I.

At all times herein mentioned, Respondent was licensed by the California Horse Racing Board in the license category of "trainer."

II.

Respondent was the trainer of record for the horse "Truly Censored" when it raced in the fourth race on November 15, 2015 at Los Alamitos Race Course. "Truly Censored" finished second in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA32623) was taken from "Truly Censored" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to Kenneth L. Maddy Equine Analytical Chemistry Lab of the California Horse Racing Board. This is the official testing lab of the California Horse Racing Board.

IV.

At all times herein mentioned, the chain of custody of urine sample #LA32623 from "Truly Censored" was uninterrupted.

V.

Respondent was the trainer of record for the horse "Balboa Dasher" when it raced in the fifth race on November 29, 2015 at Los Alamitos Race Course. "Balboa Dasher" finished second in the aforementioned race.

VI.

A post-race urine sample (labeled sample #LA32719) was taken from "Balboa Dasher" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to Kenneth L. Maddy Equine Analytical Chemistry Lab of the California Horse Racing Board. This is the official testing lab of the California Horse Racing Board.

VII.

At all times herein mentioned, the chain of custody of urine sample #LA32719 from "Balboa Dasher" was uninterrupted.

VIII.

After analyzing the samples, Maddy Laboratory reported a finding of the prohibited drug, Clenbuterol, a class III substance, in the sample.

IX.

On December 3, 2015, Respondent was notified that "Truly Censored" had tested positive for Clenbuterol.

On December 10, 2015, Respondent was notified that "Balboa Dasher" had tested positive for Clenbuterol.

X.

The Respondent elected to have a split sample sent to Industrial Laboratories.

XI.

On December 31, 2015, Investigator Kitashima received confirmation from Industrial Labs that urine sample #LA32623 contained Clenbuterol(103+/-15 pg/ml)(Truly Censored)

XII.

On January 15, 2016, Investigator Kitashima received confirmation from Industrial Labs that urine sample #LA32719 contained Clenbuterol(179+/-15 pg/ml)(Balboa Dasher)

APPLICABLE RULES

CHRB rule violations listed in the complaint

- Rule 1887 Trainer to Insure Condition of Horse
- Rule 1843 Medication, Drugs and Other Substances
- Rule 1902 Conduct Detrimental to Horse Racing
- Rule 1859.5 Disqualification Upon Positive Test Finding
- Rule 1843.1 Prohibited Drug Substances
- Rule 1844 Authorized Medication)(e)(6)

DISCUSSION

The first action required by California Horse Racing Board Rule #1859.5 (Disqualification upon positive test findings) was applied to this case on January 8, 2016 by the Los Alamitos Stewards in Ruling #10 disqualifying Truly Censored and on January 22, 2016 in Ruling #12 disqualifying Balboa Dasher and ordering the redistribution of purses.

Trainer Gerardo Amezcua chose to represent himself telephonically in the proceedings. Amezcua did not contest any of the findings in the complaint. Gerardo testified that both horses were shipped to him the day before the race and departed shortly after they ran. This is another classic example of program training which is rampant in our industry. Both horses were being trained at the ranch by the owners. This Board feels that trainer Amezcua was simply a pawn; however a willing pawn, in the deception of the public that he was training the horses.

It must now be determined if there is any or how much of a penalty that needs to be applied by weighing aggravating or mitigating circumstances in determining Mr. Amezcua's culpability. Trainer Amezcua is also entitled to a defense of his responsibility by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), for which there are four defenses. Sections (a), (b), and (d) are procedural in nature and do not apply in this instance. However, section (c) asks the trainer to show by a preponderance of evidence that he made every reasonable effort to protect these horses from tampering by an unauthorized person or persons. In our judgment, Mr. Amezcua was remiss in not having more control over the horses he trains and allowing them to ship in and run under his name. It is hard to have any control over your horses when your only contact is within twenty four hours prior to race time.

The inquiry will now go to the penalty phase as outlined by California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which allows for aggravating and mitigating factors that would permit deviation from the penalties outlined in the text of that rule.

This is a class III violation with a class "B" penalty.

A review of the aggravating and mitigating factors is now required to determine if some deviation from the minimum penalty is appropriate.

- (1) *Past Medication Record of the Licensee:* Amezcua has one medication violations. It was however for Zilpaterol in 2014. We consider this aggravating.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance; however, at the levels detected, it is very unlikely. Mitigating.
- (3) *The Legal Availability of the Drug:* Clenbuterol is available from any veterinarian as it is not an illegal drug to use, just to race on. This is a neutral factor.
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* It is our opinion that trainer Amezcua did not administer nor was he aware that "Truly Censored" and Balboa Dasher" had been administered Clenbuterol. "Truly Censored" was shipped to trainer Amezcua on November 14, 2015 and left on November 15, 2015. "Balboa Dasher" arrived at Amezcua's barn on January 28, 2015 and shipped on January 30, 2015. Both horses were transported from and returned to El Portillo Ranch in Long Beach, Ca. This is a mitigating factor.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a neutral factor as both horses were shipped to trainer Amezcua the day prior to the race.
- (6) *Steps Taken by the Owner to Safeguard Against Subsequent Medication Violations, Including but not Limited to, the Transfer of the Horse(s) to an Unaffiliated Trainer:* There was no evidence on this factor and is therefore neutral.
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* This is a neutral factor as there is no evidence of such.
- (8) *Purse of the Race:* The purses were minimal, \$9870 and \$7425 and is therefore mitigating.
- (9) *Whether the Drug Found to Be Present in the Official Sample was one for which the Horse was Receiving Treatment as Determined through the Process Described in Rule #1842 (Veterinary Report):* Veterinary reports do not indicate either horse having been prescribed Clenbuterol. Aggravating.
- (10) *Whether there was any Suspicious Wagering Pattern on the Race* Mitigating as there was no evidence of any unusual wagering pattern.
- (11) *Whether the Licensed trainer was Acting under the Advice of a Licensed Veterinarian:* There is no evidenced of any Veterinarians advice for approval of this drug to be administered to "Truly Censored" or "Balboa Dasher" Aggravating.

A review of the factors reveals that there are more mitigating and neutral factors than aggravating ones.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug Clenbuterol was found in urine sample #LA32623 taken from the horse "Truly Censored," the second place finisher in the fourth race at Los Alamitos Race Course on November 15, 2015, and in the urine sample #LA32719 taken from the horse "Balboa Dasher", the second place finisher in the fifth race at Los Alamitos Race Course on November 29, 2015. The issue of culpability with regard to California Horse Racing Board Rule #1887 placed the responsibility on trainer Gerardo Amezcua. To avoid such responsibility, Mr. Amezcua had the burden to present convincing evidence and/or testimony in accordance with California Horse Racing Board Rule #1888 and, having failed to do so, he must be held accountable. This finding requires the disqualification of both "Truly Censored and Balboa Dasher" in accordance with California Horse Racing Board Rule #1859.5.

This Board of Stewards took judicial notice of the penalty guidelines as defined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations). Clenbuterol is a class III drug that falls in the class "B" penalty.

PROPOSED DECISION

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

State of California
CALIFORNIA HORSE RACING BOARD

* * *

Trainer Gerardo Amezcua, who started the horses "Truly Censored" in the fourth race on November 15, 2015, "Balboa Dasher" in the fifth race on November 29, 2015 at Los Alamitos Race Course, is fined five thousand dollars (\$5,000.00)* and suspended one hundred and twenty (120) days pursuant to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) and Rule #1859.5 (Disqualification Upon Positive Test) for violation of California Horse Racing Board Rules #1843 (a, b & d) (Medication, Drugs and Other Substances - Clenbuterol - Class III), #1843.1 (Prohibited Drug Substances), #1844 (e)(6) (Authorized Medication) and #1902 (Conduct Detrimental to Horse Racing).

During the term of suspension, all licenses and license privileges of Gerardo Amezcua are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Gerardo Amezcua is denied access to premises in this jurisdiction.

*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

Lic# 300390-06/2016

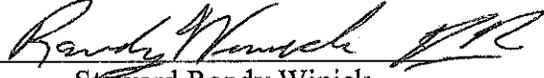
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PROPOSED DECISION

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

Dated 3/18/16 by this Board of Stewards:


Steward James Dreyer


Steward Randy Winick


Steward Tom Ward

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